

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 210

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

AN ACT

RELATING TO PUBLIC SCHOOLS; REQUIRING REPORTS OF SCHOOL
EMPLOYEE MISCONDUCT; PROVIDING THAT SETTLEMENT AGREEMENT
CONFIDENTIALITY PROVISIONS DO NOT RELIEVE RESPONSIBILITY FOR
REPORTING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 22-10A-5 NMSA 1978 (being Laws 1997,
Chapter 238, Section 1, as amended) is amended to read:

"22-10A-5. BACKGROUND CHECKS--KNOWN CONVICTIONS--ALLEGED
ETHICAL MISCONDUCT--REPORTING REQUIRED--LIMITED IMMUNITY--
PENALTY FOR FAILURE TO REPORT.--

A. As used in this section, "ethical misconduct"
means behavior or conduct engaged in by a licensed school
employee that violates the standards of accepted ethical
behavior and the standards of professional conduct adopted and

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1 promulgated by rule of the department.

2 ~~[A.]~~ B. An applicant for initial licensure shall be
3 fingerprinted and shall provide two fingerprint cards or the
4 equivalent electronic fingerprints to the department to obtain
5 the applicant's federal bureau of investigation record.
6 Convictions of felonies or misdemeanors contained in the
7 federal bureau of investigation record shall be used in
8 accordance with the Criminal Offender Employment Act. Other
9 information contained in the federal bureau of investigation
10 record, if supported by independent evidence, may form the
11 basis for the denial, suspension or revocation of a license for
12 good and just cause. Records and related information shall be
13 privileged and shall not be disclosed to a person not directly
14 involved in the licensure or employment decisions affecting the
15 specific applicant. The applicant for initial licensure shall
16 pay for the cost of obtaining the federal bureau of
17 investigation record.

18 ~~[B.]~~ C. Local school boards and regional education
19 cooperatives shall develop policies and procedures to require
20 background checks on an applicant who has been offered
21 employment, a contractor or a contractor's employee with
22 unsupervised access to students at a public school.

23 ~~[C.]~~ D. An applicant for employment who has been
24 initially licensed within twenty-four months of applying for
25 employment with a local school board, regional education

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1 cooperative or a charter school shall not be required to submit
2 to another background check if the department has copies of
3 ~~[his]~~ the applicant's federal bureau of investigation records
4 on file. An applicant who has been offered employment, a
5 contractor or a contractor's employee with unsupervised access
6 to students at a public school shall provide two fingerprint
7 cards or the equivalent electronic fingerprints to the local
8 school board, regional education cooperative or charter school
9 to obtain ~~[his]~~ the applicant's federal bureau of investigation
10 record. The applicant, contractor or contractor's employee who
11 has been offered employment by a regional education cooperative
12 or at a public school may be required to pay for the cost of
13 obtaining a background check. At the request of a local school
14 board, regional education cooperative or charter school, the
15 department is authorized to release copies of federal bureau of
16 investigation records that are on file with the department and
17 that are not more than twenty-four months old. Convictions of
18 felonies or misdemeanors contained in the federal bureau of
19 investigation record shall be used in accordance with the
20 Criminal Offender Employment Act; provided that other
21 information contained in the federal bureau of investigation
22 record, if supported by independent evidence, may form the
23 basis for the employment decisions for good and just cause.
24 Records and related information shall be privileged and shall
25 not be disclosed to a person not directly involved in the

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1 employment decision affecting the specific applicant who has
2 been offered employment, contractor or contractor's employee
3 with unsupervised access to students at a public school.

4 ~~[D.]~~ E. A local superintendent, charter school
5 administrator or regional education cooperative shall report to
6 the department any known conviction of a felony or misdemeanor
7 involving moral turpitude of a licensed school employee that
8 results in any type of action against the licensed school
9 employee.

10 ~~[E. The state board may suspend or revoke the~~
11 ~~license of a local superintendent who fails to report a~~
12 ~~criminal conviction involving moral turpitude of a licensed~~
13 ~~school employee.]~~

14 F. A local superintendent, charter school
15 administrator or director of a regional education cooperative
16 or their respective designees shall investigate all allegations
17 of ethical misconduct about any licensed school employee who
18 resigns, is being discharged or terminated or otherwise leaves
19 employment after an allegation has been made. If the
20 investigation results in a finding of wrongdoing, the local
21 superintendent, charter school administrator or director of a
22 regional education cooperative shall report the identity of the
23 licensed school employee and attendant circumstances of the
24 ethical misconduct on a standardized form to the department
25 within thirty days following the separation from employment.

.168822.1

1 Copies of that form shall not be maintained in public school,
 2 school district or regional education cooperative records. No
 3 agreement between a departing licensed school employee and the
 4 local school board, school district, charter school or regional
 5 education cooperative shall diminish or eliminate the
 6 responsibility of investigating and reporting the alleged
 7 ethical misconduct, and any such agreement to the contrary is
 8 void. Unless the department has commenced its own
 9 investigation of the licensed school employee prior to receipt
 10 of the form, the department shall serve the licensed school
 11 employee with a notice of contemplated action involving that
 12 employee's license within ninety days of receipt of the form.
 13 If that notice of contemplated action is not served on the
 14 licensed school employee within ninety days of receipt of the
 15 form, the form, together with any documents related to the
 16 alleged ethical misconduct, shall be expunged from the licensed
 17 school employee's records with the department and shall not be
 18 subject to public inspection.

19 G. The secretary may suspend, revoke or refuse to
 20 renew the license of a local superintendent, charter school
 21 administrator or regional education cooperative director who
 22 fails to report as required by Subsections E and F of this
 23 section.

24 ~~[F.] H. A person who in good faith reports [any~~
 25 ~~known conviction of a felony or misdemeanor involving moral~~

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1 ~~turpitude of a licensed school employee~~ as provided in
2 Subsections E and F of this section shall not be held liable
3 for civil damages as a result of the report [~~provided that~~].
4 The person being accused shall have the right to sue for any
5 damages sustained as a result of negligent or intentional
6 reporting of inaccurate information or the disclosure of any
7 information to an unauthorized person."

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